IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 118 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHANABHAI ISHWARBHAI RATHODIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 118 of 1993

MR HARESH J TRIVEDI for Petitioner No. 1

Mr.A.J.Desai, learned A.P.P.for Respondent No. 1

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 16/07/2002

C.A.V. JUDGEMENT

1. This appeal is directed against the judgment and order dated 27.11.1992 passed by the learned Addl.Sessions Judge, Vadodara in Sessions Case no. 18/92 by which the appellant-accused Shanabhai Ishwarbhai

Rathodia was convicted for offence under sec. 324 of I.P.C. and sentenced to 9 months rigorous imprisonment and fine of Rs.1,000/- in default rigorous imprisonment for 1 month.

2. The prosecution case was that on 29.4.91, Sherkhan Mohammadkhan Pathan, Karimbhai Mohammad Vora and Ibrahim Bhagubhai Chauhan were sitting near the huts in the Tarsali village. At that time, at about 9.00 p.m. the present accused Shanabhai who was also residing in the same huts came with an axe speaking abusive language. On the earlier day, there was a scuffle between the persons of Rathodia caste and police came there for investigation. The accused also belongs to the same caste and was of the belief that witness Ibrahimbhai came to the court to depose against him. Therefore, he came with an axe and asked the witness Ibrahimbhai "why you came to give deposition against me" ? Thereafter, he gave an axe blow on the forehead portion of witness Ibrahimbhai which hit the upper portion of the left eye. Sherkhan and Karimbhai who were sitting with the witness Ibrahimbhai ran to catch hold of the accused, however, he ran away with the axe. Thereafter, Sherkhan, Karimbhai Mohammadbhai and Karim Udesing took Ibrahimbhai to the S.S.G.hospital where he was admitted. The C.M.O. Dr.H.J.Vora gave Vardhi at 22.15 hrs. to the H.C.Udesing who was on duty who in turn informed the Makarpura police station. Accordingly, entry no. 17/91 was noted down in the Makarpura police station diary. Thereupon, P.S.I. Jahirmiya Thakore went to the S.S.G.Hospital and recorded the complaint of Sherkhan. Thereafter, relying on the complaint of Sherkhan, offence under Sec. 307, 504 of I.P.c. and Sec. 135 of Bombay Police Act was registered against the present accused vide C.R.No. I 204/91 in the Makarpura police station. The I.O. P.S.I. Kanjibhai Dindore later recorded the dying declaration of injured Ibrahimbhai at 3.55 a.m. on 30.4.91, recorded the panchanama of place of offence, took the necessary articles from the scene of offence, recorded and seized the panchanama of blood stained clothes of the witness Ibrahimbhai which were produced by Mohammad Kulabhai, recorded the statement of the witnesses, recorded and seized the panchanama of muddammal axe used by the accused and obtained the necessary certificates and finally filed the chargesheet for the offences under Sec. 307 of I.P.C. and Sec. 135 of the Bombay Police Act against the present accused.

3. The trial court on basis of the material on record and relying on the medical evidence came to the finding that the injury sustained by the witness

Ibrahimbhai was given by the axe of the accused, however, came to the conclusion that the injury caused by the accused was not made with an intention to kill him and accordingly the prosecution failed to prove that the offence under Sec. 307 of I.P.C. is committed. However, he, with the help of axe which is a sharp cutting instrument, gave blow to the injured whereby the offence under Sec. 324 of I.P.c. is committed. The learned trial court also came to the conclusion that the prosecution failed to do the investigation regarding the restriction of carrying the weapons, thereby failed to prove the offence under SEc. 135 of the Bombay Police Act and therefore ordered for the conviction and sentence as stated above.

4. Mr.H.J.Trivedi, learned advocate for the accused read over the important deposition of the witnesses and tried to convince me that the learned trial court has erred in construing that the injury was simple injury as described under Sec. 323 of the I.P.C. and not as described under Sec. 324 of the I.P.C. and prayed that under Sec. 323 of I.P.C., maximum sentence is 1 year and fine and therefore as the accused has already undergone some days in jail and the matter is of 1991, the present accused may be released after considering the sentence undergone by treating the offence under Sec. 323 of the I.P.C.

5. Mr.A.J.Desai, learned A.P.P. has vehemently submitted that the court must look to the reason for which the accused gave blow of axe to the witness Ibrahimbhai. The cause is that the witness gave deposition against the accused in court of law. If the life of a citizen is always in danger, if he gives deposition against the accused, then under no circumstances any person would be ready and willing to give deposition against any accused and therefore to set an example against such accused, this court should not interfere with the sentence as ordered by the trial court and dismiss the appeal.

6. I have gone through the record and proceedings of the trial court. The prosecution witness no. 1 Sherkhan Mohammad Pathan has stated that the incident took place on 29.4.91 between 8.00 to 9.00 p.m. at navinagri hutments situated in Tarsali village. On the previous day of the incident, there was a quarrel between the persons of Rathodia caste. The police came and the persons ran away. The police called the witness Ibrahimbhai and asked him who beat this gentleman. Thereupon, the witness stated that there were 40 or 50

persons staying in the huts and he cannot say who beat him. On the day of the incident, the witness Ibrahimbhai, his wife Vahida and Karimbhai were talking to each other and at that time the accused came in a drunk situation and was speaking abusive language and stated that who gave deposition against him. Thereafter, he gave one blow with axe which he carried with him on the upper portion of the eye of witness Ibrahimbhai. On account of continuous bleeding from the cut portion of the eye, he became unconscious. The other witness tried to catch hold of Shanabhai but he ran away. Thereafter, they took Ibrahimbhai to the Makarpura police station and then to the hospital for treatment. The witness identified the accused as well as the axe. Nothing material comes out from the cross-examination of the witness as it was done by the accused himself. However, on the next adjournment, the witness was examined by the advocate of the accused. The witness denied that the accused Shanabhai was keeping dog with him and on the day of the incident the dog ran behind the injured Ibrahimbhai and while running he got injury with iron sheet which was at a height of 6 ft.

7. The second witness injured Ibrahimbhai Bhagubhai has also identified the accused and the axe which he carried with him. He supported the say of the deposition given by the Sherkhan. He had denied the suggestion that he used to keep one pet dog and on the day of the incident the dog was after Ibrahimbhai and while running, he was injured with the iron sheet which he put on his lobby.

8. P.W. 3 Karimbhai Mohammad Vora has stated that on the day of the incident between 8.00 to 9.00 p.m. while he, complainant Sherkhan and injured witness Ibrahimbhai were sitting outside and talking about the business, the accused came and started speaking abusive language and gave one axe blow to the witness Ibrahimbhai on the forehead portion. The accused gave blow of axe saying that why he gave deposition against him on the previous day and thereafter ran away. The witness identified the accused and the axe. Ibrahimbhai was in the hospital for 5 to 6 days.

In cross-examination, the witness denied that the accused never came to the place of the incident and further denied that they never took the witness Ibrahimbhai first to the police station and thereafter to the hospital and that no blow of axe was given by the accused.

9. P.W. 4 Pratapsing Udesing Chauhan who is also

eye witness to the place of the incident stated that the incident took place in the 4th month of the year 1991 when he was sitting on his ota of his house. His house is situated opposite the house of Ibrahimbhai. The house of the accused was five houses away from the house of witness Ibrahimbhai. Shanabhai went speaking abusive language. To this Ibrahimbhai told him not to speak such language. Thereupon, Shanabhai gave one blow of axe which he was carrying. The witness saw that thereafter Shanabhai ran away. The witness identified the accused Shanabhai and the axe in the Court. Ibrahimbhai was given the blow of axe in the upper portion of the nose. Bandage was applied and he was taken to the hospital. The witness denied that he has not seen the incident at all.

10. P.W. 5 Ahmedbhai Namubhai is the panch witness of the place of the incident but nothing was seized from the place of the incident. P.W. 6 Ramchandra Lilaram Khubchandani is the panch witness for the muddammal article axe which was used by the accused and it was identified by him in the court. The panchanama is at exh. 20. P.W. 7 Kantibhai Dhulabhai (by mistake it is mentioned as P.W. 6 but it is to be considered as P.W. 7) is the second panch witness of the place of the incident. He has stated that from the place of the incident the police seized two types of earth (1) blood stained earth and (2) simple earth for which panchanama exh. 17 was prepared. On the next day, the police also called him at Makarpura police station and showed him the blood stained clothes. He identified the panchanama which was prepared in his presence. The panchanama of the blood stained clothes is given exh. 18. Nothing material comes out from the cross-examination of the witness. P.W. 8,9 and 11 are police witnesses and P.W. 10 is Dr. Rishikesh Aniruddh Vora was was the medical officer at the S.S.G.hospital at the relevant time. The doctor stated that on the day of the incident at about 10.25 p.m. Ibrahimbhai Bhagubhai came with police yadi for treatment and gave history that at about 8.30 p.m. he sustained an axe blow. The injured was not conscious and he had an injury of 2" long verticle on left eye brow inner side and bleeding from his nostrils. The injured was discharged from the hospital on 2.5.91 and the injury certificate is given exh. 26. The doctor also states that the said injury is possible by muddammal axe which was shown to him. In cross-examination the witness stated that such injury is possible by dashing with the sharp iron sheet.

11. From the aforesaid deposition, it is crystal

clear that Dr.Vora has no enmity with the present accused and therefore he is an independent witness and his deposition carries weight. Moreover, the other witnesses also have stated the facts with minor changes. The trial court rightly came to the conclusion that the injury was caused by the accused to witness Ibrahimbhai and convicted the accused under sec. 324 of the I.P.C.instead of Sec. 302 of the I.P.C. The say of the witness Ibrahimbhai gets corroboration from the other witnesses as well as the medical evidence produced on the record.

12. In the above view of the matter, I fully agree with the reasons and findings of the trial court and hold that the accused is rightly convicted under Sec. 324 of the I.P.C. Therefore, this appeal is dismissed. The appellant is on bail and his bail bonds stand cancelled. Muddammal to be disposed of in terms of the direction given by the learned trial Judge in the judgment.

(SHARAD D DAVE, J)

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